

determined that its traditional end-to-end approach to determining jurisdiction was inappropriate. Even if this analysis were applicable, however, we would still find that FWD is an interstate service based on the Commission's "mixed use" doctrine.¹³⁰

40 We seek comment on the appropriate basis or bases for asserting federal jurisdiction over the various categories of IP-enabled services. Specifically, we request comment on whether the Commission should extend the findings made in our *Pulver Declaratory Ruling* to other IP-enabled services. We also seek comment on whether the Commission's end-to-end analysis is similarly inappropriate for other IP-enabled services.¹³¹ We emphasize that our discussion of the end-to-end analysis refers only to the jurisdictional analysis (*i.e.* the inquiry into whether a call is interstate or intrastate based on its end points) and not the analysis of whether protocol conversion occurs between the end points of a communication. As noted in the *Pulver Declaratory Ruling*, with Internet communications, the points of origination and termination are not always known.¹³² Does the end-to-end analysis, designed to assess point-to-point communications, have any relevance in this new IP environment? To the extent we were to retain the end-to-end approach, we request comment on whether the Commission should apply its "mixed use" standard, described above, to other IP-enabled services. We also request comment on the capabilities of existing Internet geo-location technologies used to ascertain the location of the source of a packet. Specifically, are these technologies sufficiently accurate for purposes of determining the jurisdiction of some IP-enabled communications and how should they affect our jurisdictional analysis? In cases where the *Pulver Declaratory Ruling* analysis is inapposite, we seek comment as to whether there are other grounds on which we may assert federal jurisdiction over a given class of IP-enabled services. If we were to draw jurisdictional distinctions between classes of IP-enabled services, what service characteristics (*e.g.*, ability to determine the geographical location of the originating and terminating points of their customers' calls, use of the Internet) justify those distinctions?

41 We further seek comment regarding whether, and on what grounds, one or more classes of IP-enabled service should be deemed subject to *exclusive* federal jurisdiction with regard to traditional common carrier regulation. For example, the Constitution's Supremacy Clause prohibits state regulation in a variety of circumstances, including where the federal government occupies the field leaving no room for state regulation¹³³ or where it is not possible

¹³⁰ The Commission has previously applied the mixed use standard to situations where it was impractical or impossible to separate out interstate from intrastate traffic carried over a shared facility. See *Pulver Declaratory Ruling* at paras. 21-22 (citing *GTE Telephone Operating Cos., GTE Tariff No. 1, GTOC Transmittal No. 1148*, CC Docket No. 98-79, Memorandum Opinion and Order, 13 FCC Rcd 22466, 22468, para. 5 (1998), *MTS/WATS Market Structure Order*, 97 FCC 2d 682).

¹³¹ See generally *Bell Atl. Tel. Cos. v FCC*, 206 F.3d 1, 5-8 (D.C. Cir. 2000)

¹³² See *Pulver Declaratory Ruling* at para. 21.

¹³³ See, *e.g.*, *Fidelity Fed Sav & Loan Ass'n v Cuesta*, 458 U S 141, 153 (1980) (citing *Rice v Santa Fe Elevator Corp.*, 331 U S 218, 230 (1947)).

to separate the interstate and intrastate aspects of a particular matter, and state regulation would negate valid Commission regulatory goals.¹³⁴ Does either of these grounds – or any other ground contemplated by the Supremacy Clause – apply to IP-enabled services?¹³⁵ Does the Commerce Clause, which denies states “the power unjustifiably to discriminate against or burden the interstate flow of articles of commerce,” apply to limit state regulation of IP-enabled services?¹³⁶ Alternatively, we note that section 253 preempts state regulations that “prohibit or have the effect of prohibiting the ability of an entity to provide any interstate or intrastate telecommunications service.”¹³⁷ In addition, as to mobile radio services, section 332 of the Act preempts state or local governments from regulating the “entry of or the rates charged by any commercial mobile service or any private mobile service.”¹³⁸ Do these provisions apply to any class of IP-enabled service? Finally, we seek comment regarding any other grounds upon which the Commission might form jurisdictional conclusions. What role could the states play in a federal regime? In addition, are there categories of IP-enabled services that can be regulated at both the state and federal level without interfering with valid Commission policy? If so, how? We seek comment on how section 2(b)’s reservation of state authority with respect to “intrastate communications service by wire or radio” affects our jurisdictional analysis.¹³⁹

V. APPROPRIATE LEGAL AND REGULATORY FRAMEWORK

42. We invite commenters to address the proper legal classification and appropriate regulatory treatment of each specific class of IP-enabled services they have identified in response to the questions posed above. The Act distinguishes between “telecommunications service[s]” and “information service[s],” and applies particular regulatory entitlements and obligations to the former class but not the latter.¹⁴⁰ Thus, our analysis begins with an examination of the statutory

¹³⁴ *Texas Office of Pub. Util. Counsel v. FCC*, 183 F.3d 393, 422 (5th Cir. 1999) (citing *Pub. Serv. Comm’n of Maryland v. FCC*, 909 F.2d 1510, 1515 (D.C. Cir. 1990)).

¹³⁵ As summarized by the Supreme Court, federal law and policy preempts state action: (1) when Congress expresses a clear intent to preempt state law, (2) when there is outright or actual conflict between federal and state law, (3) where compliance with both federal and state law is in effect physically impossible; (4) where there is implicit in federal law a barrier to state regulation; (5) where Congress has legislated comprehensively, thus occupying an entire field of regulation; or (6) where the state law stands as an obstacle to the accomplishment and execution of the full objectives of Congress. See *Louisiana Pub. Serv. Comm’n v. FCC*, 476 U.S. 355, 368-69 (1986) (further citations omitted). The Court also notes that the “critical question in any preemption analysis is always whether Congress intended that federal regulation supersede state law.” *Id.* at 369. Additionally, the Supreme Court has held that preemption may result not only from action taken by Congress but also from a federal agency action that is within the scope of the agency’s congressionally delegated authority. See *id.*

¹³⁶ *Oregon Waste Sys. v. Dep’t of Envtl. Quality*, 511 U.S. 93, 98 (1994).

¹³⁷ 47 U.S.C. § 253.

¹³⁸ See 47 U.S.C. § 332(c)(3)(A).

¹³⁹ *Id.* § 152(b).

¹⁴⁰ See, e.g., *supra* paras. 24-27.

definitions as they apply to particular types of IP-enabled service. But, as described more fully, commenters must consider what policy consequences flow from a particular statutory definition. The Act reflects Congress' attempt to balance numerous policy objectives. For example, Congress stated that the Internet should remain free from regulation.¹⁴¹ But Congress also has stated public policy goals that would presumably continue to apply as communications networks evolve. For example, it has stated that universal service should be maintained, that telecommunications equipment and services should remain usable by people with disabilities, that prompt emergency service should be available to the public through the 911 system, and that communications should be accessible to law enforcement officers acting on the basis of a lawfully obtained warrant.¹⁴² The Commission is empowered by statute to weigh these various objectives and craft regulations that specifically target the relevant features of VoIP and other IP-enabled services. Where the Act does not prescribe a particular regulatory treatment, the Commission may have authority to impose requirements under Title I of the Act. Alternatively, the Commission may forbear from applying specific provisions. Finally, of course, the Commission is entitled to amend or revoke its own rules and regulations when the underlying circumstances no longer apply. Accordingly, we seek specific, pragmatic proposals that account for the technical, market, or other features that characterize IP-enabled services and that address the interrelationship between those features, the statutory text, and our policy goals.

A. Statutory Classifications

43. In this section, we examine the appropriate statutory classification for each category of IP-enabled services identified by commenters in response to section III, above. Although, as described below, we do not believe that particular statutory classifications will lead inexorably to any particular regulatory treatment, these classifications are nevertheless important to our analysis. We therefore seek comment regarding the appropriate legal classification of the various types of IP-enabled service identified. Which classes of IP-enabled services, if any, are "telecommunications services" under the Act? Which, if any, are "information services"? How, if at all, does our conclusion today that Pulver's Free World Dialup is an information service impact the classification of other IP-enabled services? We note that the Act specifically excepts from the "information service" category activities relating to the "management, control or operation of a telecommunications system or the management of a telecommunications

¹⁴¹ 47 U.S.C. § 230 (stating federal policy "to preserve the vibrant and competitive free market that presently exists for the Internet and other interactive computer services, unfettered by Federal or State regulation").

¹⁴² See 47 U.S.C. § 255 (requiring manufacturer of telecommunications equipment and providers of telecommunications services to ensure that equipment and services are designed to be usable by individuals with disabilities, if readily achievable); 47 U.S.C. § 615 note (stating federal policy to encourage and facilitate prompt deployment of a seamless, ubiquitous, and reliable end-to-end public "911" system), 47 U.S.C. § 1002(a) (requiring carriers to ensure that equipment, facilities and services are capable of providing authorized surveillance to law enforcement agencies); see also 47 U.S.C. 254(c)(1) (declaring importance of maintaining universal service, defined as "an evolving level of telecommunications services that the Commission shall establish periodically . . . taking into account advances in telecommunications and information technologies and services").

service.”¹⁴³ How, if at all, does this exception apply to IP-enabled services? What effect, if any, do judicial decisions – including but not necessarily limited to those issued in *Brand X Internet Services v. FCC*¹⁴⁴ and *Vonage Holdings Corp. v. Minnesota Pub. Utils. Comm’n*¹⁴⁵ – have on the Commission’s discretion to classify IP-enabled services? More broadly, how might statutory classifications rendered in this proceeding relate to the Commission’s previous tentative conclusion that DSL-based Internet access service is an “information service”?¹⁴⁶ Where a commenter advocates treating a particular class of IP-enabled services as “telecommunications services” and another class as “information services,” we ask that the commenter address specifically the reasons why the characteristics that differentiate or appear to make the two classes similar are relevant to the “telecommunications service”/“information service” distinction. Finally, we seek comment regarding whether new and evolving technologies and services raise the possibility that a single IP-enabled communications might comprise both an “information service” component and a “telecommunications service” component.

44. Where applicable, we also ask that commenters address the extent to which our previous interpretations of statutory terms are or are not suitable for proper classification of IP-enabled services. For example, Commission rules specify that the term “enhanced services” include those services that “employ computer processing applications that act on the . . . protocol . . . of the subscriber’s transmitted information.”¹⁴⁷ Should we continue to accord this specific distinction dispositive weight when classifying services? Are there other regulatory interpretations of the Act’s “telecommunications service” and “information service” definitions – including, for example, those set forth in the *Stevens Report*¹⁴⁸ – that should be revisited at this time? Finally, are there legal constraints on the Commission’s authority to revise its interpretation of these definitions, and if so, to what extent do such constraints preclude such revision?

¹⁴³ 47 U.S.C. § 153(20).

¹⁴⁴ 345 F.3d 1120 (9th Cir. 2003), *petitions for reh’g pending*.

¹⁴⁵ 290 F. Supp. 2d 993 (D. Minn. 2003), *appeal pending*.

¹⁴⁶ See *Wireline Broadband NPRM* at 3028, para. 16; *id.* at 3030, para. 20.

¹⁴⁷ See, e.g., 47 C.F.R. § 64.702(a).

¹⁴⁸ See *Stevens Report*, 13 FCC Rcd at 11543-44, para. 88 (suggesting distinctions based on whether service (1) holds itself out as providing voice telephony or facsimile transmission service, (2) does not require the customer to use CPE different from that CPE necessary to place an ordinary touch-tone call (or facsimile transmission) over the public switched telephone network; (3) allows the customer to call telephone numbers assigned in accordance with the North American Numbering Plan, and associated international agreements; and (4) transmits customer information without net change in form or content).

B. Specific Regulatory Requirements and Benefits

45. We recognize that the nature of IP-enabled services may well render the rationales animating the regulatory regime that now governs communications services inapplicable here, and that the disparate regulatory treatment assigned to providers of “telecommunications services” and “information services” might well be inappropriate in the context of IP-enabled services. We thus ask commenters to address how we might alter the regulatory treatment that might otherwise accompany the statutory classification they urge for various classes of IP-enabled service.

46. As mentioned above, Congress has provided the Commission with a host of statutory tools that together accord the Commission discretion in structuring an appropriate approach to IP-enabled services. Title II of the Communications Act governs the regulation of telecommunications services. Similarly, Title VI governs the regulation of cable services. Title I of the Act confers upon the Commission ancillary jurisdiction over matters that are not expressly within the scope of a specific statutory mandate but nevertheless necessary to the Commission’s execution of its statutorily prescribed functions.¹⁴⁹ Section 1 of the Communications Act established the Commission “[f]or the purpose of regulating interstate and foreign commerce in communication by wire and radio,”¹⁵⁰ and section 4(i) authorized the Commission to “perform any and all acts, make such rules and regulations, and issue such orders, not inconsistent with this Act, as may be necessary in the execution of its functions.”¹⁵¹ Ancillary jurisdiction may be employed, in the Commission’s discretion, where the Commission has subject matter jurisdiction over the communications at issue and the assertion of jurisdiction is reasonably required to perform an express statutory obligation.¹⁵² “Because the Commission’s judgment on how the public interest is best served is entitled to substantial deference, the Commission’s choice of regulatory tools” when these conditions are met will stand “unless arbitrary or capricious.”¹⁵³

47. Second, with regard to telecommunications carriers and telecommunications services, the Commission is required to forbear from applying a particular regulation or statutory provision if it determines that: (1) enforcement of the regulation is not necessary to ensure that charges are just and reasonable, and are not unjustly or unreasonably discriminatory; (2) enforcement of the regulation is not necessary to protect consumers; and (3) forbearance is

¹⁴⁹ See, e.g., *Computer & Communications Indus. Ass’n v. FCC*, 693 F.2d 198, 213 (D.C. Cir. 1982) (declaring Commission authority in this area “well settled”).

¹⁵⁰ 47 U.S.C. § 151.

¹⁵¹ 47 U.S.C. § 154(i).

¹⁵² See generally *United States v. Southwestern Cable Co.*, 392 U.S. 157 (1968).

¹⁵³ *Computer & Communications Indus. Ass’n*, 693 F.2d at 213.

consistent with the public interest.¹⁵⁴ Use of this forbearance authority might be appropriate if the statutory classification accorded to a particular class of IP-enabled services leads to regulatory consequences that are neither necessary nor appropriate in the context of such services.

48. In light of the statutory prerogatives described above, we ask commenters to describe which particular regulatory requirements and entitlements, if any, should apply to each category of IP-enabled service.¹⁵⁵ In the sections that follow, we set forth particular requirements and benefits that may or may not apply to some or all IP-enabled services. How would the particular statutory classifications urged by the commenter for various IP-enabled services impact the applicability of each of the regulatory obligations and benefits described below? For each class of service and each requirement or benefit, is the result appropriate as a matter of public policy? Specifically, are there reasons why the purposes of this requirement or benefit are more or less relevant in the context of IP-enabled services than they are in the context of traditional telephony services? Would there be any technical, economic, or other impediments to carriers' compliance with the requirement or enjoyment of the benefit that are not present in other contexts in which it applies? What consequences might application of a particular requirement or benefit have on investment and other pertinent business decisions? What public interests should we consider, and how would a choice to apply, or not to apply, the particular requirement or benefit implicate those interests? Assuming *arguendo* that the obligation or benefit does apply to some or all IP-enabled services, we seek comment as to whether it should be applied differently in the context of those services, and whether we are authorized to apply it differently. Finally, to what extent, if any, could voluntary agreements entered into by IP-enabled service serve the purpose now served by regulation in the context of the legacy circuit-switched network?

49. To the extent commenters argue that the default regulatory framework associated with the legal classification accorded to a given service is inappropriate, we seek comment on whether the Commission should use its forbearance authority or Title I ancillary powers to modify that framework. We ask commenters who urge forbearance to address the specific section 10 criteria as they relate to the application of particular requirements or benefits to IP-enabled services generally or individual IP-enabled services in particular. Similarly, to the extent that commenters urge that we apply requirements or benefits in contexts outside the express scope of a relevant statutory provision pursuant to our Title I jurisdiction, we seek comment on

¹⁵⁴ 47 U.S.C. § 160. Section 10(d) specifies, however, that "[e]xcept as provided in section 251(f), the Commission may not forbear from applying the requirements of section 251(c) or 271 under subsection (a) of this section until it determines that those requirements have been fully implemented." See *id.* § 160(d).

¹⁵⁵ For example, one might question what it would mean to apply E911 obligations on an Internet retailer, or to tariff an online newspaper offering. Similarly, some obligations may only be sensible in the context of VoIP service. However, to ensure that whatever distinctions we ultimately draw among different IP-enabled services are sound as a matter of law, technology, and public policy, we decline in this Notice to foreclose any particular approach, and therefore frame our questions in terms of all "IP-enabled services," though some may only apply to particular types of service.

whether the assertion of jurisdiction is reasonably ancillary to the Commission's statutory responsibilities¹⁵⁶

1. Public Safety and Disability Access

a. Introduction

50. The Commission is charged with ensuring that radio and wire communications are comprehensively available to all in our nation, that they serve the interest of the national defense, promote the safety of life and property, and provide individuals with disabilities with equivalent access to such services in the public interest. In addition, the Wireless Communications and Public Safety Act of 1999 (911 Act) directs the Commission to "encourage and facilitate the prompt deployment of a seamless, ubiquitous, and reliable end-to-end infrastructure" for public safety communications, and establishes 911 as the national emergency number to enable all citizens to reach emergency services directly and efficiently, whether they use a wireless or wireline phone.¹⁵⁷ In this section, we seek comment on the public safety and disability access implications of IP technology and services.¹⁵⁸

b. 911/E911 and Critical Infrastructure Deployment in IP-Enabled Services

51. Efforts by federal, state, and local government, along with the significant efforts by wireline and wireless service providers, have resulted in the nearly ubiquitous deployment of 911 service. While 911 service for wireline consumers has been in existence since 1965, wireless 911 service has been a requirement since 1996. The emergence of IP as a means of transmitting voice and data and providing other services via wireless, cable, and wireline communications has significant implications for meeting the nation's critical infrastructure and

¹⁵⁶ See, e.g., *United States v. Midwest Video Corp.*, 406 U.S. 649, 661 (1972) (citing *Southwestern Cable Co.*, 392 U.S. at 175) (upholding Commission's exercise of its Title I powers to regulate community antenna television (CATV) when the growth of that service "threatened to deprive the public of the various benefits of [the] system of local broadcasting stations that the Commission was charged with developing and overseeing").

¹⁵⁷ 47 U.S.C. § 615 note (e), see *Wireless Communications and Public Safety Act of 1999*, Pub. L. No. 106-81, 113 Stat. 1286 (codified at 47 U.S.C. §§ 222, 251(c)) (911 Act). In enacting the 911 Act, Congress found that emerging technologies could be a critical component of such an end-to-end infrastructure.

¹⁵⁸ The Department of Justice has informed the Commission that it plans to file a petition for rulemaking asking the Commission to initiate a comprehensive rulemaking to address law enforcement's needs relative to CALEA. See 47 U.S.C. §§ 1000 *et seq.* The Commission recognizes the importance of ensuring that law enforcement's requirements are fully addressed. The Commission takes seriously the issues raised by law enforcement agencies concerning lawfully authorized wiretaps. Accordingly, the Commission plans to initiate a rulemaking proceeding in the near future to address the matters we anticipate will be raised by law enforcement, including the scope of services that are covered, who bears responsibility for compliance, the wiretap capabilities required by law enforcement, and acceptable compliance standards. This Notice does not prejudice the outcome of our proceeding on CALEA, and we will closely coordinate our efforts in these two dockets.

911 communications needs and for that reason we seek comment below on various aspects associated with determining the appropriate regulatory treatment for IP-enabled services.

52. Under the Commission's rules, there are two sets of requirements for 911. The first set, "basic 911," requires covered carriers to deliver all 911 calls to the appropriate public safety answering point (PSAP) or designated statewide default answering point.¹⁵⁹ Basic 911 service does not address what sort of information the PSAP should receive from that call; rather it seeks to ensure the delivery of 911 calls. The Commission, therefore, also adopted requirements for covered wireless carriers to be capable of delivering the calling party's call-back number and the calling party's location information.¹⁶⁰ These rules, referred to as the Commission's "enhanced 911" (E911) rules, are currently being phased in across the country and deployment of E911 capability is ongoing.¹⁶¹

53. Against this backdrop, we seek comment in this proceeding on the potential applicability of 911, E911, and related critical infrastructure regulation to VoIP and other IP-enabled services. As an initial matter, we have previously found in the *E911 Scope Order* that the Commission has statutory authority under Sections 1, 4(i), and 251(e)(3) of the Act to determine what entities should be subject to the Commission's 911 and E911 rules.¹⁶² However, in deciding whether to exercise our regulatory authority in the context of IP-enabled services, we are mindful that development and deployment of these services is in its early stages, that these services are fast-changing and likely to evolve in ways that we cannot anticipate, and that imposition of regulatory mandates, particularly those that impose technical mandates, should be undertaken with caution. How should we weigh the potential public benefits of requiring

¹⁵⁹ See 47 C.F.R. §§ 20.18(b), 64.3001.

¹⁶⁰ See *Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, CC Docket No. 94-102, RM 8143, Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 18676, 18689-18722, paras. 24-91 (1996). Recognizing the challenges of implementation of E911 requirements, the Commission adopted a phased implementation plan for the covered carriers. Phase I implementation, which requires a covered carrier to transmit a 911 caller's call-back number and cell site to the appropriate PSAP, began on April 1, 1998. See 47 C.F.R. § 20.18(d). Phase II implementation, which requires a covered carrier to transmit a 911 caller's location information to the appropriate PSAP, began on October 1, 2001. See 47 C.F.R. § 20.18(e), (h).

¹⁶¹ See 47 C.F.R. § 20.18.

¹⁶² *Revision of the Commission's Rules to Ensure Compatibility With Enhanced 911 Emergency Calling Systems, Amendment of Parts 2 and 25 to Implement the Global Mobile Personal Communications by Satellite (GMPCS) Memorandum of Understanding and Arrangements; Petition of the National Telecommunications and Information Administration to Amend Part 25 of the Commission's Rules to Establish Emissions Limits for Mobile and Portable Earth Stations Operating in the 1610-1660 MHz Band*, Docket Nos. CC Docket No. 94-102, IB Docket No. 99-67, Report and Order and Second Further Notice of Proposed Rulemaking, FCC 03-290 at paras. 13-15 (rel. Dec. 1, 2003) (*E911 Scope Order*). In the *E911 Scope Order*, the Commission found that it had authority under sections 1, 4(i), and 251(e)(3) of the Act, 47 U.S.C. §§ 151, 154(i), 251(e)(3), to determine whether the public interest required that a provider of a particular service should be required to provide 911/E911 to its customers, and if so, to what extent and in what time frame such covered service should be subject to the Commission's 911/E911 requirements.

emergency calling and other public safety capabilities against the risk that regulation could slow technical and market development? We seek comment on whether the natural evolution of IP-enabled services over the course of the next few years will lead to technological improvements and cost savings in the transmittal of and response to emergency information, interoperability among public safety entities, and other elements of critical infrastructure needed to provide for public safety and homeland security in accordance with the Commission's statutory obligations and regulatory objectives. We recognize, too, that IP-enabled services may enhance the capabilities of PSAPs and first responders – and thus promote public safety – by providing information that cannot be conveyed by non-IP-enabled systems. Therefore, before we make any decision with respect to regulation, it is important that we develop a fuller understanding of the ways in which IP-enabled services or IP protocols can facilitate 911, E911, and critical infrastructure deployment and reduce attendant costs, both currently and in the future. We next ask commenters to address the technical and operational capabilities of current VoIP and other IP-enabled services to work with 911 service. We seek comment on whether IP-enabled services are technically and operationally capable of complying with the Commission's basic 911 service rules to ensure that calls are directed to the appropriate PSAP.¹⁶³ In particular, we seek comment on issues relating to the routing of IP-initiated 911 calls to PSAPs, and the potential for IP-enabled services to provide a viable and cost-effective alternative to the dedicated 911-trunking facilities in use today. Are there multiple technical methods by which VoIP providers could route calls? We also seek comment on ways in which current IP-enabled service providers seek to provide a similar service to their customers.

54. We also seek comment on whether VoIP and other IP-enabled services are technologically and operationally capable of delivering call-back and location information, enhanced 911 service, or to provide analogous functionalities that would meet the intent of the 911 Act and the Commission's regulations. We seek comment on whether there are multiple technical methods by which VoIP providers could provide call-back and location information? Are minimal technical requirements necessary, and what solutions can potentially provide them most effectively and efficiently? We note that the *Hatfield Report*,¹⁶⁴ which we commissioned in 2002 to provide an independent analysis of technical issues associated with the implementation of enhanced 911 services, examined IP technology as a potential solution to such issues. Moreover, some vendors of VoIP equipment claim to have resolved the technical problems associated with transmitting location and call-back to the appropriate PSAP through software upgrades.¹⁶⁵ To the extent that there is data on whether these software solutions meet or provide some functionality useful in meeting the Commission's E911 requirements, we request commenters to provide such data. In addition to considering software-based solutions, are there

¹⁶³ See 47 C.F.R. §§ 20.18(b), 64.3001

¹⁶⁴ See generally Dale N. Hatfield, *A Report on Technical and Operational Issues Impacting the Provision of Wireless Enhanced 911 Services* <http://gulfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6513296239> (*Hatfield Report*).

¹⁶⁵ See Encore Networks, Inc., *Helping LECs Comply with Local Regulations for E911 Services* (visited Feb. 7, 2004) <http://www.fastcomm.com/zzs_e911.htm>

other location solutions that equipment manufacturers could provide to enable a PSAP to identify the location of an IP-based 911 “caller”? Should the Commission distinguish between classes of IP-enabled service providers based on the method by which they provide these capabilities?

55 In the *E911 Scope Order*, we identified four criteria as relevant to determining whether particular entities should, in the public interest, be subject to some form of 911/E911 regulation: 1) the entity offers real-time, two-way switched voice service, interconnected with the public switched network, either on a stand-alone basis or packaged with other telecommunications services; 2) customers using the service or device have a reasonable expectation of access to 911 and enhanced 911 services; 3) the service competes with traditional CMRS or wireline local exchange service; and 4) it is technically and operationally feasible for the service or device to support E911.¹⁶⁶ We also stated that other factors could inform our decision as well.¹⁶⁷ We seek comment on whether there are IP-enabled services, and VoIP services in particular, that satisfy these four criteria. In view of the variety of IP-enabled services, and their very different functionalities, we also seek comment on whether these four criteria provide the appropriate analytical framework for determining whether and to what extent IP-enabled services should fall within the scope of our 911 and E911 regulatory framework. Should any of these criteria be modified, weighed differently, or replaced? Should alternative criteria be considered?

56. Assuming that we find IP-enabled services in general or certain services in particular to fall within our E911 “scope” criteria, we seek comment on how best to achieve our policy objectives for ensuring the availability of 911 and E911 capability. Should the Commission extend 911 and E911 requirements to such services, and if so, by what means and to what extent? We emphasize that we do not presume at this point that direct regulation would be required, and we specifically seek comment on the effectiveness of alternatives to direct regulation to achieve our public policy goals. For example, in December 2003, the National Emergency Number Association (NENA) and the Voice on the NET (VON) Coalition reached a voluntary agreement on approaches to provide VoIP subscribers with basic 911 service, and to work together to develop solutions that may lead to VoIP subscribers receiving enhanced 911 functionality.¹⁶⁸ We seek comment on the potential for similar agreements among public safety trade associations, commercial IP-stakeholders, consumers, and state and local E911 coordinators and administrators. To what extent can voluntary consensus, rather than regulation, spur

¹⁶⁶ See *E911 Scope Order* at paras 18-19.

¹⁶⁷ *Id.* at para 19

¹⁶⁸ See VON Coalition and NENA, *Public Safety and Internet Leaders Connect on 911*, Press Release (Dec 1, 2003) (setting forth agreement for how two industry groups will work together as VoIP is deployed). Among other things, NENA and VON agreed that for “service to customers using phones that have the functionality and appearance of conventional telephones,” 911 access would be provided within a reasonable period of three to six months, and “prior to that time [service providers would] inform customers of the lack of access.” The agreement also stated that VoIP providers would work with local officials as the providers introduced their services into those local areas on ways to provide 911 access

deployment of IP-enabled E911 services? Should the Commission seek to facilitate voluntary, inclusive agreements similar to the NENA/VON agreement? Would promulgation of best practices or technical guidelines promote the provision of effective IP-based E911 services? If we conclude that mandatory requirements are necessary, how can we provide for technological flexibility so that our rules allow for the development of new and innovative technologies?

57. We also seek comment on the time frame in which we should consider 911 and E911 regulatory issues in the IP context. We note that the rapid growth, proliferation, and evolution of IP-enabled services and platforms, both now and in the future, may make timely regulatory assessment and response difficult. However, we recognize that the 911 Act establishes 911 as the national emergency number and requires the Commission to play an active role in promoting the deployment of a widespread network for public safety communications. Thus, we ask whether it may be appropriate to impose a requirement that some or all IP-enabled voice services provide 911 functionality to consumers and seek comment on this proposal. In light of the rapid pace of innovation in IP technology and services, and the potential for these innovations to yield future public safety benefits, we seek comment on whether consideration should be given to refraining from imposing E911 or related regulatory obligations on IP-enabled services until these services are better established and more widely adopted by consumers. At the same time, we seek to avoid a scenario in which a decision to impose E911 requirements at a future date would require costly and inefficient "retrofitting" of embedded IP infrastructure. Therefore, we seek comment on how best to balance these considerations. We also seek comment on how IP-enabled service providers, public safety entities, and other affected parties can best ensure that their forward planning in business and technology development allows for the possibility of future implementation of IP-enabled E911 services without the need for retrofitting.

c. Disability Access

58. We seek comment on how we should apply the disability accessibility requirements set forth in sections 255 and 251(a)(2) to any providers of VoIP or other IP-enabled services.¹⁶⁹ In September 1999, the Commission issued an order adopting rules to implement

¹⁶⁹ Section 255 requires a manufacturer of telecommunications equipment or CPE to ensure that such equipment is designed to be accessible to and usable by individuals with disabilities, if readily achievable, and requires a provider of a "telecommunications service" to ensure that its service is accessible to and usable by people with disabilities, if readily achievable. See 47 U.S.C. § 255. Where these goals are not readily achievable, section 255 requires that the equipment or service be made compatible with peripherals or specialized CPE commonly used to allow access to people with disabilities. See 47 U.S.C. § 255(d). Finally, section 251(a)(2) prohibits telecommunications carriers from installing network features, functions, or capabilities that do not comply with the guidelines and standards set forth in section 255. See 47 U.S.C. § 251(a)(2).

Section 255, adopting definitions from the Americans with Disabilities Act (ADA), defines the term "disability" to include "a physical or mental impairment that substantially limits one or more of the major life activities of such individual," "a record of such impairment," or the state of "being regarded as having such an impairment." See 42 U.S.C. § 12102(2)(A), *see also* 47 U.S.C. § 255(a)(1) (adopting ADA definition by reference). The Commission's (continued . . .)

sections 255 and 251(a)(2) (*Disability Access Order*),¹⁷⁰ which included a Notice of Inquiry regarding, among other things, section 255's applicability in the context of "Internet telephony" and "computer-based equipment that replicates telecommunications functionality."¹⁷¹ We invite commenters here to refresh the record compiled in response to that Notice of Inquiry. We ask that commenters address the range of questions presented above in relation not only to the "IP telephony" services that were the focus of the prior Notice, but also with regard to the full range of other IP-enabled services at issue here. Specifically, do and should the rules established in the *Disability Access Order* apply in the context of VoIP or other IP-enabled services? We note specifically that in the *Disability Access Order*, the Commission relied on Title I to apply section 255 obligations to providers of voicemail and interactive menu services, both of which were deemed "information services."¹⁷² Would that approach be appropriate with regard to any providers of VoIP or other IP-enabled services that we deem to be "information services"?

59. Section 225 of the Communications Act requires common carriers offering voice telephone service to also provide Telecommunications Relay Service (TRS) so that persons with disabilities will have equal access to the telecommunications network.¹⁷³ Beyond traditional TRS, which requires the use of a teletypewriter (TTY), the Commission has implemented this mandate by determining that two IP-enabled services, IP Relay and Video Relay Service (VRS), are forms of TRS.¹⁷⁴ In both scenarios, the Commission determined that TRS, as defined, was

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regulations implementing section 255 specifically define "readily achievable," "usable," "accessible," and other pertinent terms. See 47 C.F.R. § 6.3

¹⁷⁰ See generally *Disability Access Order*, 16 FCC Rcd 6417. Among other things, the Commission (1) required manufacturers and service providers to develop processes to evaluate the accessibility, usability, and compatibility of covered services and equipment, see *Disability Access Order*, 16 FCC Rcd at 6429-33, paras. 21-30; (2) required manufacturers and service providers to ensure that information and documentation provided in connection with equipment or service be accessible to people with disabilities, where readily achievable, and that employee training, where provided at all, account for accessibility requirements, see *id.*, (3) required the maximum feasible deployment of accessibility features that can be incorporated into product design, see *id.* at 6440-42, paras. 49-54; and (4) prohibited telecommunications carriers from installing network features, functions, or capabilities that do not comply with the accessibility requirements set forth elsewhere in the Order, see *id.* at 6435-37, paras. 37-42.

¹⁷¹ *Id.* at 6483, para. 175; see generally *id.* at 6483-87, paras. 173-85.

¹⁷² See *id.* at 6455-62, paras. 93-108.

¹⁷³ 47 U.S.C. § 225. TRS enables an individual with a hearing or speech disability to communicate by telephone or other device with a hearing individual. This is accomplished through TRS facilities that are staffed by specially trained communications assistants (CAs) using special technology. The CA relays conversations between persons using various types of assistive communication devices and persons who do not require such assistive devices. See generally *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CC Docket No. 98-67, Report and Order and Further Notice of Proposed Rulemaking, 15 FCC Rcd 5140, para. 2 (2000) (*Improved TRS Order & FNPRM*).

¹⁷⁴ IP Relay functions in a similar manner to traditional TRS except that instead of a TTY, which is generally linked to the PSTN, the text is provided to, and received from, the communications assistant (CA) via the TRS consumer's computer or other Internet-enabled device. See generally *Provision of Improved Telecommunications Relay Services and Speech-To-Speech Services for Individuals with Hearing and Speech Disabilities; Petition for* (continued)

not limited to “telecommunications” and that Congress intended the term “telephone transmission services” to be interpreted broadly to implement section 225’s goal to “ensure that interstate and intrastate [TRS] are available, to the extent possible and in the most efficient manner, to hearing-impaired and speech-impaired individuals in the United States.”¹⁷⁵ We seek comment on how these interpretations should inform our deliberations as we consider the appropriate classifications for IP-enabled services. We also note that current or future IP-enabled services may facilitate communications by individuals with disabilities more effectively than traditional technologies. To what extent, if any, will the advent of IP-enabled services improve traditional services designed to ensure access by persons with disabilities?

60. Relatedly, we seek comment on how migration to IP-enabled services will affect our statutory obligation to ensure that interstate and intrastate telecommunications relay services are available to hearing-impaired and speech-impaired individuals. Section 225 created a cost recovery mechanism whereby providers of eligible TRS services are compensated for the “reasonable costs” of providing interstate TRS¹⁷⁶ and required the Commission to prescribe regulations ensuring that those costs “be recovered from all subscribers for every interstate service and costs caused by intrastate telecommunications relay services shall be recovered from the intrastate jurisdiction.”¹⁷⁷ We seek comment regarding how other decisions we make in this docket might affect contributions to the Interstate TRS Fund, and how, if at all, the Commission should amend its rules in light of the increasing use of IP-enabled services. We also seek comment on how any change in our TRS rules will affect the provision of intrastate TRS by the states.

2. Carrier Compensation

61. The Commission seeks comment on the extent to which access charges¹⁷⁸ should apply to VoIP or other IP-enabled services.¹⁷⁹ If providers of these services are not classified as

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Clarification of WorldCom, Inc., CC Docket No. 98-67, Declaratory Ruling and Second Further Notice of Proposed Rulemaking, 17 FCC Rcd 7779 (2002) (*IP Relay Order*). TRS is a telecommunications relay service that allows persons with hearing or speech disabilities who use sign language to communicate with the CA in sign language (rather than by text) through video equipment. A video link allows the CA to view and interpret the party’s signed conversation (and vice versa), and then relay the conversation back and forth with the other party to the call (the voice caller). In almost all cases, the video link is provided over the Internet. See *Improved TRS Order & FNPRM*, 15 FCC Rcd at 5152-54, paras 21-27.

¹⁷⁵ *IP Relay Order*, 17 FCC Rcd at 7783, para. 10.

¹⁷⁶ See 47 U.S.C. § 225(d)(3), 47 C.F.R. § 64.604(c)(5)(iii)(E).

¹⁷⁷ 47 U.S.C. § 225(d)(3). Under our existing rules, every carrier providing interstate telecommunications services must contribute to the Interstate TRS Fund on the basis of end-user telecommunications revenues. See 47 C.F.R. § 64.604(c)(5)(iii)(A).

¹⁷⁸ Section 69.5(b) of the Commission’s rules states that “[c]arrier’s carrier charges shall be computed and assessed upon all interexchange carriers that use local exchange switching facilities for the provision of interstate or foreign telecommunications services.” 47 C.F.R. § 69.5. To keep local telephone rates low, access charges traditionally have exceeded the forward-looking economic costs of providing access services. See *Inter-carrier Compensation* (continued....)

interexchange carriers, or these services are not classified as telecommunications services, should providers nevertheless pay for use of the LECs' switching facilities? As a policy matter, we believe that any service provider that sends traffic to the PSTN should be subject to similar compensation obligations, irrespective of whether the traffic originates on the PSTN, on an IP network, or on a cable network. We maintain that the cost of the PSTN should be borne equitably among those that use it in similar ways. Given this, under what authority could the Commission require payment for these services? If charges should be assessed on these services, should they be the same as the access charges assessed on providers of telecommunications services, or should the charges be computed and assessed differently? How should different charges be computed and assessed? By seeking comment on whether access charges should apply to the various categories of service identified by the commenters, we are not addressing whether charges apply or do not apply under existing law ¹⁸⁰

62. If, on the other hand, VoIP or other IP-enabled services are classified as telecommunications services, should the Commission forbear from applying access charges to these services, or impose access charges different from those paid by non-IP-enabled telecommunications service providers? If so, how should different charges be computed and assessed? If commenters believe charges should be assessed, must carriers pay access charges, or should they instead pay compensation under section 251(b)(5) of the Act?¹⁸¹ Would assessment of rates lower than access charge rates require increases in universal service support or end-user charges? If no access charges, or different charges, are assessed for VoIP and IP-enabled service providers' use of the PSTN, would identification of this traffic result in significant additional incremental costs?

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NPRM, 16 FCC Rcd at 9614, para. 7 (citing *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776 (1997) (*First Universal Service Report and Order*))

¹⁷⁹ Since 1983 the Commission has exempted enhanced service providers (ESPs) from the payment of certain interstate access charges (the "ESP exemption"). See *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Intercarrier Compensation for ISP-Bound Traffic*, CC Docket Nos. 96-98, 99-68, Order on Remand and Report and Order, 16 FCC Rcd 9151, 9158, para. 11 (2001) (*ISP Remand Order*) (citing *MTS/WATS Market Structure Order*, 97 FCC 2d at 715, para. 83), see also *ESP Exemption Order*, 3 FCC Rcd at 2633, para. 17, *Access Charge Reform*, CC Docket Nos. 96-262, 94-1, 91-213, 95-72, First Report and Order, 12 FCC Rcd 15982, 16133, para. 344 (1997), (*Access Charge Reform First Report and Order*). Consequently, ESPs are treated as end users for the purpose of applying access charges and are, therefore, entitled to pay local business rates for their connections to the LEC central offices and the PSTN. See *ISP Remand Order*, 16 FCC Rcd at 9158, para. 11 (citing *ESP Exemption Order*, 3 FCC Rcd at 2635 n.8, 2637 n.53), see also *Access Charge Reform First Report and Order*, 12 FCC Rcd at 16133-35, paras. 344-48.

¹⁸⁰ Thus, we expressly preserve the Commission's flexibility to address one or all of the petitions discussed above by issuing a declaratory ruling or rulings before the culmination of the instant proceeding. We also expressly preserve the Commission's flexibility to address the *Intercarrier Compensation* and *Universal Service* proceedings currently pending before the Commission before the culmination of the instant proceeding. See *Intercarrier Compensation NPRM*, 16 FCC Rcd 9610 (2001); *Universal Service Further NPRM*, 17 FCC Rcd 24952 (2002).

¹⁸¹ Section 251(b)(5) requires LECs to "establish reciprocal compensation arrangements for the transport and termination of telecommunications." 47 U.S.C. § 251(b)(5)

3. Universal Service

63. We seek comment on how the regulatory classification of IP-enabled services, including VoIP, would affect the Commission's ability to fund universal service. Many of these issues have already been raised in the *Wireline Broadband NPRM*, and we encourage parties to incorporate into this docket prior filings in that proceeding that are relevant to our inquiry here. In the *Wireline Broadband NPRM*, the Commission sought comment on whether facilities-based broadband Internet access providers are required to contribute, pursuant to its mandatory authority,¹⁸² or should be required to contribute to universal service, pursuant to its permissive authority.¹⁸³ In this proceeding, we broaden that inquiry by asking commenters to address the contribution obligations of both facilities-based and non-facilities-based providers of IP-enabled services. These questions are also intertwined with issues raised in our separate *Universal Service Contribution Methodology* proceeding, which explores possible ways to reform our current methodology for assessing universal service contributions.¹⁸⁴ We leave questions of whether to reform the current methodology to the separate *Universal Service Contribution Methodology* proceeding.

64. If certain classes of IP-enabled services are determined to be information services, could or should the Commission require non-facilities-based providers of such services to contribute to universal service pursuant to its permissive authority? Would such providers "provide" telecommunications? If the Commission were to exercise its permissive authority over facilities-based and non-facilities-based providers of IP-enabled services, how could it do so in an equitable and nondiscriminatory fashion? Would the Commission identify specific services that are subject to its permissive authority? How would providers of IP-enabled services identify the portion of their IP-enabled service revenues that constitute end-user telecommunications revenues? If certain IP-enabled services are information services, the Commission has determined that such services would be subject to federal jurisdiction. Which entity is providing

¹⁸² See 47 U.S.C. § 254(d). Section 254(d) states that "[e]very telecommunications carrier that provides interstate telecommunications services shall contribute" to universal service. This section is often referred to as the Commission's mandatory contribution authority.

¹⁸³ *Wireline Broadband NPRM*, 17 FCC Rcd at 3053, para. 74; see also *Stevens Report*, 13 FCC Rcd at 11570, para. 139; 47 U.S.C. § 254(d). Section 254(d) states that "[a]ny other provider of interstate telecommunications may be required to contribute . . . if the public interest so requires." This section is often referred to as the Commission's permissive contribution authority.

¹⁸⁴ See *Federal-State Joint Board on Universal Service, 1998 Biennial Regulatory Review – Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Relay Service, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms, Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990, Administration of the North American Numbering Plan and North American Numbering Plan Cost Recovery Contribution Factor and Fund Size, Number Resource Optimization, Telephone Number Portability, Truth-in-Billing and Billing Format*, CC Docket Nos. 96-45, 98-171, 90-571, 92-237, 99-200, 95-116, 98-170, Report and Order and Second Further Notice of Proposed Rulemaking, 17 FCC Rcd 24952, 24984-24998, paras. 66-100 (2002).

telecommunications in this instance and how can we identify the interstate revenues, if any, associated with the provision of such telecommunications? If the Commission determines that other IP-enabled services are not information services, how would providers of such services identify their interstate and international telecommunications revenues? If IP-enabled services are not subject to contributions, what would be the magnitude of the forgone contribution revenues over the next five years? Does the advent of IP-enabled services weigh in favor of any specific reforms currently under consideration in our *Universal Service Contribution Methodology* proceeding?¹⁸⁵ For example, under a telephone number-based methodology, VoIP providers that utilize telephone numbers would be subject to assessment. Under a connections-based methodology, providers of broadband connections used to provide VoIP could be subject to assessment.

65. In addition to considering the impact of our classification decision on funding the universal service support mechanisms, the Commission must also evaluate how the regulatory classification of IP-enabled services would affect the Commission's universal service support mechanisms.¹⁸⁶ Previously, the Commission concluded that the generic universal service definition in section 254(c)(1) is "explicitly limited to telecommunications services."¹⁸⁷ At the same time, the Commission found that the statute provided the authority to support a broader class of services, including Internet access, an information service, for schools and libraries.¹⁸⁸ If IP-enabled services, or specific classes of services, are information services, would the Commission need to revisit its interpretation of section 254(c)(1) in order to include such services in the list of supported services?¹⁸⁹ We seek specific comment on how the regulatory

¹⁸⁵ *Id*

¹⁸⁶ Universal service programs consist of support to subsidize loop costs, and, in some cases, switching costs of eligible carriers servicing high-cost areas, and Lifeline/Link Up, which provides support to low-income consumers for telephone service and installation. Section 254 of the Act codified the Commission's historical commitment to universal service, directing the Commission to establish policies to preserve and advance universal service. The "core" services that are currently supported by universal service include: single-party service; voice grade access to the public switched network, DTMF signaling or its functional equivalent; access to emergency services; access to operator services; access to interexchange services; access to directory assistance; and toll limitation services for qualifying low-income consumers. See 47 C.F.R. § 54.101. Section 254 also directed the Commission to create mechanisms to enhance access to advanced telecommunications and information services for schools, libraries and rural health care providers, respectively. Currently, the schools and libraries mechanism provides support for telecommunications services, internet access, and internal connections, while the rural healthcare mechanism provides support for telecommunications services and internet access. All of these mechanisms are referred to collectively as "universal service."

¹⁸⁷ *First Universal Service Report and Order*, 12 FCC Rcd at 9009, para. 437.

¹⁸⁸ *Id.*, see also 47 U.S.C. § 254(c)(3), (h)(1)(B). The U.S. Court of Appeals for the Fifth Circuit upheld the Commission's determination that it had the authority to support non-telecommunications services for schools and libraries. See *Texas Office of Pub. Util. Counsel v. FCC*, 183 F.3d at 439-43.

¹⁸⁹ Even though advanced services are not directly supported by federal universal service, "[Commission] policies do not impede the deployment of modern plant capable of providing access to advanced services." *Federal-State Joint Board on Universal Service, Multi-Association Group (MAG) Plan for Regulation of Interstate Services of* (continued....)

classification of IP-enabled services would impact each of the current universal service support mechanisms – high cost, low income, schools and libraries, and rural health care programs – and whether any rule changes are necessary in light of our ultimate classification decision. We also seek comment on whether the advent of VoIP or other IP-enabled services requires any modifications to our rules to fulfill the requirements of section 254(e) and 254(k).¹⁹⁰ In particular, how can the Commission ensure that services supported by universal service bear no more than a reasonable portion of the costs associated with facilities that are used to provide both supported services and unsupported services?

66. We seek comment more broadly on how potential migration to IP-enabled services will affect our statutory obligations to support and advance universal service.¹⁹¹ Commenters should describe whether migration to IP-enabled services might lessen eligible telecommunications carriers' (ETCs) ability to maintain existing circuit-switched networks and deploy new packet-switched networks. In some instances, IP-enabled providers reach end-user customers using loops that are currently supported by universal service. To what extent would classification of IP-enabled services, or specific classes of such services, as information services affect the eligibility of rural and non-rural ETCs for high cost support? Will migration to IP-enabled services lower or raise the cost of providing service on the public switched network or IP-enabled platforms? We fully recognize that many IP-enabled services are delivered over network infrastructure that traditionally has been supported by universal service. We seek to develop a record on whether there is a fundamental need to reexamine our universal service paradigm if consumers increasingly are utilizing other platforms, unsupported by universal service funds, to fulfill their communications needs.

4. Title III

67. As noted above, IP-enabled services can be provided over any broadband platform, including a wireless platform, and there are numerous examples of wireless providers offering such services. IP-enabled services may also involve the use of wireless technology in combination with other platforms, e.g., a VoIP call may originate from a mobile device and terminate on a wireline or cable platform. To the extent that providers of IP-enabled services use wireless technology to deliver such services, they fall within the ambit of Title III of the Act,

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Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers, CC Docket Nos. 96-45, 00-256, Fourteenth Report and Order, Twenty Second Order on Reconsideration, 16 FCC Rcd 11244, 1322, paras 199-200 (2001) ("*Fourteenth Report and Order*"), *recon pending* ("The public switched telephone network is not a single-use network. Modern network infrastructure can provide access not only to voice services, but also to data, graphics, video, and other services."); *see also Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Order and Order on Reconsideration, 18 FCC Rcd 15090, 15095, para. 13 (2003) (describing "no barriers" policy).

¹⁹⁰ Section 254(e) states that support shall only be used for the provision, maintenance, and upgrading of facilities and services for which the support is intended. 47 U.S.C. § 254(e). Section 254(k) also requires that services supported by universal service bear no more than a reasonable share of the joint and common costs of the facilities used to provide these services. 47 U.S.C. § 254(k).

¹⁹¹ 47 U.S.C. § 254(b).

which provides the structure for the Commission's regulation of spectrum-based services, including broadcasting and all other services that use radio waves¹⁹² Moreover, within Title III, Section 332 provides a specific framework for regulation of commercial mobile radio service (CMRS) providers¹⁹³ Section 332 provides that CMRS providers are common carriers subject to the provisions of Title II, but it also authorizes the Commission to forbear from applying Title II provisions it determines are inapplicable.¹⁹⁴ Accordingly, in implementing Section 332, the Commission has forbore from applying most Title II economic regulation to CMRS providers based on the competitive nature of the CMRS marketplace.¹⁹⁵ In addition, Section 332 limits state regulation of CMRS by preempting states from regulating the entry of or rates charged by CMRS providers.¹⁹⁶

68. In light of this statutory framework and history of forbearance, we seek comment on what effect Title III may have on the provision or regulation of IP-enabled services provided over, in whole or in part, a wireless platform. Does Title III require us to treat such services differently from other IP-enabled services? We note that Title III does not expressly identify or distinguish wireless services based on whether they are IP-enabled. Does Title III apply to IP-enabled wireless services and other wireless services in the same way? We also note that most of our rules governing the licensing and operation of wireless services, particularly commercial services, are technology-neutral except to the extent necessary to prevent interference among competing spectrum uses. We thus seek comment on whether the Commission should make any distinctions among wireless providers of IP-enabled services based on the nature of their spectrum use (*e.g.*, fixed/mobile, licensed/unlicensed).

69 We also seek comment on the impact of Section 332 on IP-enabled services offered by CMRS providers. Section 332(c)(1) provides that CMRS providers are common carriers subject to the provisions of Title II, but it also gives the Commission authority to limit Title II regulation of CMRS.¹⁹⁷ Accordingly, in implementing Section 332, the Commission has refrained from applying most Title II economic regulation to CMRS providers based on the competitive nature of the CMRS marketplace.¹⁹⁸ In addition, Section 332(c)(3) preempts states

¹⁹² See *Title III – Provisions Relating to Radio*, 47 U.S.C. §§ 301 *et seq.*

¹⁹³ 47 U.S.C. § 332

¹⁹⁴ 47 U.S.C. § 332(c)(1).

¹⁹⁵ See generally *CMRS Second Report and Order*, 9 FCC Rcd 1411.

¹⁹⁶ 47 U.S.C. § 332(c)(3)

¹⁹⁷ Section 332(c)(1) of the Act provides that the Commission may specify any provision of Title II, other than Sections 201, 202, and 208, as inapplicable to CMRS providers if it finds certain criteria specified by the statute to have been met. 47 U.S.C. § 332(c)(1) Since this provision was adopted, the Commission has obtained broader forbearance authority with respect to all telecommunications providers under Section 10 of the Act. 47 U.S.C. § 160.

¹⁹⁸ See generally *CMRS Second Report and Order*, 9 FCC Rcd 1411.

from regulating the entry of or rates charged by CMRS providers.¹⁹⁹ Thus, to the extent that CMRS providers offer VoIP or other IP-enabled CMRS services that we classify as subject to Title II, we believe that the statutory provisions of Section 332 apply, *i.e.*, states are preempted from regulating entry or rates of such services, and the Commission may limit their regulation under Title II. We seek comment on this analysis. We also seek comment on whether there is any reason that the Commission's existing deregulatory policies with respect to Title II regulation of CMRS should not apply uniformly to IP-enabled CMRS as well as other CMRS.

5. Title VI

70 IP-enabled services, such as VoIP, also can be – and often are – provided over cable facilities. What impact, if any, should the provision of broadband over cable plant have on the Commission's treatment of IP-enabled services? What effect, if any, does Title VI of the Act have on any potential regulation of cable-based IP-enabled services?²⁰⁰ If the Commission determines that IP-enabled services, or any particular class of IP-enabled services, are telecommunications services, should the Commission forbear from applying certain Title II provisions to cable providers' offering IP-enabled services? Alternatively, if the Commission determines that some or all IP-enabled services constitute information services, could the Commission use its ancillary jurisdiction to apply any Title II-like obligation to any cable providers of IP-enabled services? If so, what is the basis for an exercise of that authority? Finally, is any class of IP-enabled services properly classified under the Act as "cable service"?²⁰¹ If so, what regulatory requirements, if any, would apply to those services? Specifically, should any class of VoIP or other IP-enabled service be construed to be a "cable service" for franchising

¹⁹⁹ 47 U.S.C. § 332(c)(3). States may petition the Commission for authority to regulate CMRS rates based on certain statutory criteria, but no state has been granted such authority to date.

²⁰⁰ See 47 U.S.C. §§ 521 *et seq.*, 47 C.F.R. §§ 76.1 *et seq.* For example, Title VI and our implementing rules govern the video programming that a cable operator must carry, see 47 U.S.C. §§ 534, 536, 531, establish rules that prevent a cable operator from unfairly withholding affiliated video programming from other cable operators and satellite broadcast providers, see 47 U.S.C. § 548; establish horizontal cable ownership limits, see 47 U.S.C. § 533(f)(1), and establish and limit the authority for local franchises to regulate cable operators, see 47 U.S.C. §§ 541 *et seq.*

²⁰¹ The term "cable service" means

- (A) the one-way transmission to subscribers of (i) video programming, or (ii) other programming service, and
- (B) subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service

47 U.S.C. § 522(6) "Video programming" means "programming provided by, or generally considered comparable to programming provided by, a television broadcast station." 47 U.S.C. § 522(20). "Other programming service" means "information that a cable operator makes available to all subscribers generally." 47 U.S.C. § 522(14). The term "interactive on-demand service" means "a service providing video programming to subscribers over switched networks on an on-demand, point-to-point basis, but does not include services providing video programming prescheduled by the programming providers." 47 U.S.C. § 522(12)

purposes?²⁰² In responding to these questions, we ask commenters to explain whether the Commission should make any distinction among categories of cable providers for regulatory purposes.

VI. OTHER REGULATORY REQUIREMENTS

A. Consumer Protection

71. In this section, we seek comment on whether it is necessary to extend the customer proprietary network information (CPNI) requirements and other consumer protections afforded in the Act to subscribers of VoIP or other IP-enabled services. First, section 222 of the Act restricts telecommunications carriers' use and disclosure of CPNI.²⁰³ In section 222, Congress recognized both that telecommunications carriers are in a unique position to collect sensitive personal information and that customers maintain an important privacy interest in protecting this information from disclosure and dissemination. We seek comment on whether the CPNI requirements should apply to any provider of VoIP or other IP-enabled services.

72. Second, we seek comment regarding a number of other consumer protections set forth in the Act and Commission rules. For example, section 214 of the Act requires common carriers to obtain Commission authorization before constructing, acquiring, operating or engaging in transmission over lines of communications, or discontinuing, reducing or impairing telecommunications service to a community.²⁰⁴ Section 258 of the Act prohibits "slamming" by requiring that any "telecommunications carrier" must adhere to authorization and verification procedures prescribed by the Commission when submitting and executing carrier changes.²⁰⁵ Violators are liable to the subscriber's properly authorized carrier for all charges collected.²⁰⁶ Moreover, under sections 201 and 258 of the Act, the Commission has adopted "Truth-in-Billing" rules to improve consumers' understanding of their telephone bills.²⁰⁷ Finally, the

²⁰² See 47 U.S.C. § 522(6)(A), (14).

²⁰³ 47 U.S.C. § 222. CPNI is defined to include "(A) information that relates to the quantity, technical configuration, type, destination, location, and amount of use of a telecommunications service subscribed to by any customer of a telecommunications carrier, and that is made available to the carrier by the customer solely by virtue of the carrier-customer relationship, and (B) information contained in the bills pertaining to telephone exchange service or telephone toll service received by a customer of a carrier." 47 U.S.C. § 222(h)(1).

²⁰⁴ 47 U.S.C. § 214. See, e.g., *Verizon Telephone Companies Section 63.71 Application to Discontinue Expanded Interconnection Service Through Physical Collocation*, WC Docket No. 02-237, Order, 18 FCC Rcd 22737, 22742, para. 8 (2003) (applying five factors to determine whether "reasonable substitutes are available" to consumers).

²⁰⁵ 47 U.S.C. § 258(a).

²⁰⁶ 47 U.S.C. § 258(b); see also 47 C.F.R. § 64.1170.

²⁰⁷ See 47 C.F.R. §§ 64.2400-64.2401. Among other things, a telephone bill must: (1) be accompanied by a brief, clear, non-misleading, plain language description of the service or services rendered; (2) identify the service provider associated with each charge; (3) clearly and conspicuously identify any change in service provider; (4) identify those charges for which non-payment will not result in disconnection of the customer's basic local service; and (5) provide at least one toll-free number for customers to call to inquire or dispute any charges on the bill. The Commission also (continued. ...)

Commission has adopted rules pursuant to section 226 of the Act²⁰⁸ to ensure that customers are able to reach their preferred long distance carriers from public telephones and receive sufficient information about the rates they will pay for operator services at public phones and aggregator locations such as hotels, hospitals, and educational institutions.²⁰⁹ We seek comment on whether these billing-related requirements – or any other consumer protections not discussed here²¹⁰ – should apply to any providers of VoIP or other IP-enabled services.

B. Economic Regulation

73 We also seek comment on whether various traditional economic regulations set forth in Title II and Commission rules should be applied to any class of IP-enabled service provider. Among other things, Title II requires all common carriers of interstate or foreign communications by wire or radio to provide those communications upon reasonable request at rates, classifications, and practices that are just and reasonable;²¹¹ prohibits common carriers from unjustly or unreasonably discriminating in “charges, practices, classifications, regulations, facilities, or services” against similarly situated third-party customers;²¹² and requires providers of telecommunications service to interconnect directly or indirectly with the facilities and equipment of other such providers.²¹³ Further, the Act imposes additional requirements upon LECs, including, for example, the obligation to provide number portability.²¹⁴ The Act also entitles providers of telecommunications services to use certain incumbent LEC network

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determined that carriers should use standard labels on bills when referring to line item charges relating to federal regulatory action, such as universal service fees, subscriber line charges, and local number portability charges. *See Truth-in-Billing and Billing Format*, CC Docket No. 98-170, Report and Order and Further Notice of Proposed Rulemaking, 14 FCC Rcd 7492, 7503, 7523, paras. 21, 50 (1999), *reconsideration granted in part*, Order on Reconsideration, 15 FCC Rcd 6023 (2000), Errata, 15 FCC Rcd 16544 (Com. Car. Bur. 2000).

²⁰⁸ 47 U.S.C. § 226. Section 226 is also referred to as the “Telephone Operator Consumer Services Improvement Act” (TOCSIA). *See* 47 U.S.C. § 226(a)(2) (defining “aggregator”), (a)(9) (defining “provider of operator services”).

²⁰⁹ *See* 47 C.F.R. §§ 64.703-64.710.

²¹⁰ *See, e.g.*, 47 U.S.C. § 223 (prohibiting obscene or harassing telephone calls); 47 U.S.C. § 228 (regulating pay-per-call services).

²¹¹ 47 U.S.C. § 201. Section 201 also is the basis for the Commission’s authority to impose access charges on interexchange carriers. *See generally infra* Section V.B.2. In addition, pursuant to section 201, U.S. carriers are required to make international settlement payments to terminate international traffic unless they are exempted from such payments on certain routes or receive a waiver.

²¹² 47 U.S.C. § 202.

²¹³ 47 U.S.C. § 251(a)(1); *see also, e.g.*, 47 U.S.C. §§ 203(a) (requiring common carriers to file with the Commission tariffs for interstate and international wire and radio communications).

²¹⁴ *See* 47 U.S.C. § 251(b) (requiring those telecommunications carriers classified as LECs to offer services for resale, to provide number portability, to offer dialing parity, to provide access to rights-of-way, and to “enter into reciprocal compensation arrangements for the transport and termination of telecommunications”).

clements on an unbundled basis and at cost-based rates.²¹⁵ Finally, under the Commission's *Computer Inquiry* decisions,²¹⁶ "facilities-based common carriers" are required to provide the basic transmission services underlying their enhanced services on a nondiscriminatory basis pursuant to tariffs.²¹⁷

74. While several of the regulatory obligations discussed in previous sections of this Notice may have general applicability to any entity that seeks to offer voice services, many of the "economic" regulations set forth here have been written to apply specifically to cases involving a monopoly service provider using its bottleneck facilities to provide services to a public that is without significant power to negotiate the rates, terms, and conditions of those services. With the advent of competition in markets for telecommunications services, the Commission has tailored the application of these requirements, reserving application of the most stringent for carriers considered "dominant."²¹⁸ As a threshold matter, therefore, we seek comment on whether any of these economic regulations are appropriate in the context of IP-enabled services, given that

²¹⁵ See 47 U.S.C. § 251(c)(3); *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, Implementation of Local Competition Provisions of the Telecommunications Act of 1996; Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket Nos. 01-338, 96-98, 98-147, Report and Order and Further Notice of Proposed Rulemaking, 18 FCC Rcd 16978 (2003) (*Triennial Review Order*), corrected by Errata, 18 FCC Rcd 19020 (2003), petitions for review pending, *United States Telecom Ass'n v. FCC*, D.C. Cir. No. 00-1012 (and consolidated cases).

²¹⁶ See *Wireline Broadband NPRM*, 17 FCC Rcd at 3036-40, paras. 33-42 (providing detailed summary of the history and requirements of the *Computer Inquiry* regime).

²¹⁷ See *Computer II Final Order*, 77 FCC 2d at 415-16, para. 83. BOCs have more specific obligations under the *Computer Inquiry* regime, through either "comparably efficient interconnection" (CEI) or "open network architecture" (ONA). See generally *Computer III Phase I Order*, 104 FCC 2d at 1039-42, paras. 155-165 (describing ONA requirements); *id.* at 1064, para. 214 (describing CEI requirements).

We note that the Commission has proceedings pending before it concerning whether it should modify or eliminate the *Computer Inquiry* rules as they apply to wireline facilities. See, e.g., *Wireline Broadband NPRM*, 17 FCC Rcd 3019; *Computer III Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services, 1998 Biennial Regulatory Review of Computer III and ONA Safeguards and Requirements*, CC Docket Nos. 95-20, 98-10, Further Notice of Proposed Rulemaking, 13 FCC Rcd 6040 (1998). We do not seek to review those issues in this Notice. Rather, our request for comment is limited to the application of those rules to IP-enabled services, as we have defined that term above.

²¹⁸ It has been the Commission's policy to detariff non-dominant carriers in order to foster competition in the market for interstate, domestic, interexchange telecommunications services by subjecting these carriers to "the same incentives and rewards that firms in other competitive markets confront." *Policy and Rules Concerning the Interstate, Interexchange Marketplace*, CC Docket No. 96-61, Second Report and Order, 11 FCC Rcd 20730, 20732-33, paras. 3-4 (1996). By contrast, the Commission continues to treat incumbent LECs as dominant carriers and, absent a specific finding to the contrary for a particular market, these carriers remain subject to tariff filings, tariff support and pricing requirements. See, e.g., *Review of Regulatory Requirements for Incumbent LEC Broadband Telecommunications Services*, CC Docket No. 01-337, Notice of Proposed Rulemaking, 16 FCC Rcd 22745, 22747-48, para. 5 (2001) (*Incumbent LEC Broadband NPRM*). In addition, in the Commission's *Competitive Carrier* proceeding, the Commission removed many of the section 214 obligations imposed on non-dominant carriers. See *id.* at 22751-52, para. 9.

customers often can obtain these services from multiple, intermodal, facilities- and non-facilities-based service providers.²¹⁹ Specifically, we seek comment on (1) what regulations, if any, would apply to each class of IP-enabled services, given the legal classification urged for that class; (2) whether, for services classified as “telecommunications services,” we should use our forbearance authority to remove a particular obligation or entitlement;²²⁰ and (3) whether, for services classified as “information services,” we should exercise our ancillary jurisdiction to impose a particular obligation or entitlement. In answering these questions, we ask that commenters specifically address the market conditions that form the rationale for economic regulation in the context of the legacy network, and the extent, if any, to which the market for IP-enabled services calls for application of similar regulation.

C. Rural Considerations

75. We note that this Commission has repeatedly recognized the unique challenges facing rural carriers.²²¹ Because rural carriers generally have higher operating and equipment costs, which are attributable to lower subscriber density, small exchanges, and a lack of economies of scale, the Commission has historically not adopted one-size-fits-all policies that might impede rather than support the provision of affordable service by rural carriers.²²² We have sought comment, above, on the implications of our decisions in this docket for the universal service support mechanisms, including our high cost fund. In addition, we note that rural incumbent LECs derive a significant portion of their revenues from access charges. How might the jurisdictional analysis, set out above, affect the level of intrastate access charges that these carriers receive? We invite commenters to address whether our policies for IP-enabled services have other implications for rural communities and the providers which serve them.

D. Other Considerations

76. Finally, we seek comment on other implications of our decisions in this docket. First, we seek comment on the potential international implications raised by the use IP-enabled services, such as the potential impact on international settlement rates²²³ and the ability of

²¹⁹ For example, we note that the Commission has exercised its forbearance authority several times with respect to CMRS providers because it determined that consumers have competitive choices available to them. *See, e.g., CMRS Second Report and Order*, 9 FCC Rcd 1411 (declining to apply the requirements contained in sections 203, 204, 205, 211, and 214 of the Act to CMRS providers), *see also* 47 C.F.R. § 20.15. As noted above, the D.C. Circuit has recently affirmed the Commission’s approach. *See supra* note 123 (citing *Orloff v. FCC*, 352 F.3d 415).

²²⁰ We note that section 10(d) prohibits the Commission from forbearing from the application of section 251(c) unless it determines that the latter provision has been “fully implemented.” *See* 47 U.S.C. § 160(d). To the extent commenters urge forbearance from application of that subsection, we ask that they address this section 10(d) limitation.

²²¹ *See, e.g., Fourteenth Report and Order*, 16 FCC Rcd at 11302, para. 145.

²²² *Id.*

²²³ *See International Settlements Policy Reform, International Settlement Rates*, IB Docket Nos. 02-324, 96-261, (continued ...)

consumers to take their IP CPE overseas and continue to make and receive calls.²²⁴ We also ask parties to comment on whether the growing use of IP-enabled services presents any foreign policy or trade issues.²²⁵ Further, we seek comment whether any action relating to numbering resources is desirable to facilitate or at least not impede the growth of IP-enabled services, while at the same time continuing to maximize the use and life of numbering resources in the North American Numbering Plan.²²⁶

77. To the extent that we determine IP-enabled services are information services, we seek comment on whether there are any other policy priorities that we should consider. For example, to what extent, if any, do our policy priorities for IP-enabled services assume an underlying open network architecture? Will our decisions in this proceeding affect the incentives of facilities-based IP service providers to provide network access to non-facilities-based IP service providers? Will the incentives of facilities-based and non-facilities-based IP service providers differ? How should our policies differ with a closed or proprietary architecture? Similarly, are there customer privacy issues, separate from those raised in section 222 of the Act, that this Commission should consider?

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17 FCC Rcd 19954, 19961, para. 7 (2002) (citing *International Settlement Rates*, IB Docket No. 96-261, Report and Order, 12 FCC Rcd 19806, 19904-05, para. 216 (1997); Report and Order on Reconsideration and Order Instituting Stay, 14 FCC Rcd 9256 (1999), *aff'd sub nom. Cable & Wireless P.L.C. v. FCC*, 166 F.3d 1224 (D.C. Cir. 1999).

²²⁴ See Dan Gillmor, *Internet Calls to Challenge Phone Companies*, San Jose Mercury News, Jun. 8, 2003, at 2003 WL 19867191 (describing consumers in Japan using a telephone number assigned to area code 415, which is assigned to California), Kripa Raman, *UK Phone Numbers On Offer Here*, The Hindu Business Line, at 2003 WL 66051291 (reporting that United Kingdom company offers phone numbers assigned to the U.K. in India).

²²⁵ Currently, the Commission requires common carriers to obtain section 214 authorization to provide United States-international service. See 47 C.F.R. §§ 63.12, 63.18. This authorization process provides the Executive Branch an opportunity to review applications for national security, law enforcement, foreign policy, and trade issues prior to the carrier initiating international service. See *Rules and Policies on Foreign Participation in the U.S. Telecommunications Market*, IB Docket Nos. 97-142, 95-22, Report and Order and Order on Reconsideration, 12 FCC Rcd 23891, 23919-21, paras. 61-66 (1997) (explaining that the Commission accords deference to the expertise of the Executive Branch regarding issues of national security, law enforcement, foreign policy, and trade policy related to an international section 214 application), Order on Reconsideration, 15 FCC Rcd 18158 (2000).

²²⁶ The impact of IP-enabled services on numbering resources has been raised by members of the North American Numbering Council (NANC), our federal advisory committee on numbering issues, at a number of recent NANC meetings, including those held November 19-20, 2002, January 22, 2003, March 19, 2003, September 25, 2003, and November 5, 2003. See *NANC Meeting Minutes* (visited Feb. 7, 2004) <<http://www.fcc.gov/wcb/tapd/Nanc/nancmunu.html>>. Moreover, several members of NANC prepared two white papers on the effect of VoIP on numbering resources for presentation at the January 22, 2003, and March 19, 2003 NANC meetings. See BellSouth et al., *VOIP Numbering Issues* (visited Feb. 7, 2004) <http://www.nanc-chair.org/docs/Nov/Nov02_VoIP_White_Paper.doc>; AT&T, *VOIP Numbering Issues – Much Ado About Nothing?* (Jan. 22, 2003) <http://www.nanc-chair.org/docs/nowg/Jan03_ATT_VOIP_Paper.doc>. Finally, the Industry Numbering Committee of the Alliance for Telecommunications Industry Solutions prepared a “Report on VoIP Numbering Issues” for presentation at the November 5, 2003 NANC meeting. See <http://www.nanc-chair.org/docs/nowg/Jan03_BellSouth_VOIP_Contribution.doc> (visited Feb. 7, 2004).

78. Further, what are the impacts of our decisions on consumers' ability to bring section 208 complaints against IP service providers? Similarly, will there be any impact on the ability of IP service providers to bring enforcement actions against carriers or other providers? Will our decisions have any affect on the Commission's ability expeditiously to address complaints between IP service and facilities-based carriers? To the extent that IP-enabled services, or some subset thereof, are considered to be information services, would state commissions have the authority to resolve interconnection or service-related disputes? As a general matter, what role should state and local governments play with respect to these issues?²²⁷ How would that change under various approaches outlined in the item?

VII. PROCEDURAL MATTERS

A. Ex Parte Presentations

79. This matter shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules.²²⁸ Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required.²²⁹ Other requirements pertaining to oral and written presentations are set forth in section 1.1206(b) of the Commission's rules.

B. Comment Filing Procedures

80. Pursuant to sections 1.415 and 1.419 of the Commission's rules,²³⁰ interested parties may file comments within 60 days after publication of this Notice in the Federal Register and may file reply comments within 90 days after publication of this Notice in the Federal Register. All filings should refer to WC Docket No. 04-36. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies.²³¹

81. Comments filed through ECFS can be sent in electronic form via the Internet to <<http://www.fcc.gov/e-file/ecfs.html>>. Only one copy of an electronic submission must be filed. In completing the transmittal screen, commenters should include a full name, postal service

²²⁷ See, e.g., Letter from Matthew C. Ames, Counsel for National League of Cities et al., to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket Nos. 02-361, 03-45, 03-211 & 03-251, at 4 (filed Jan. 16, 2004) (stating that "local governments should receive adequate rent for use of public land or other public resources")

²²⁸ 47 C.F.R. §§ 1.200 *et seq.*

²²⁹ See 47 C.F.R. § 1.1206(b)(2).

²³⁰ 47 C.F.R. §§ 1.415, 1.419.

²³¹ See Electronic Filing of Documents in Rulemaking Proceedings, 63 Fed. Reg. 24121 (1998).

mailing address, and the applicable docket number, which in this instance is WC Docket No. 04-36. Parties may also submit an electronic comment by Internet e-mail. To obtain filing instructions for e-mail comments, commenters should send an e-mail to ecfshelp@fcc.gov, and should include the following words in the regarding line of the message: "get form<your e-mail address>." A sample form and directions will be sent in reply.

82. Parties who choose to file by paper must file an original and four copies of each filing. Parties filing by paper must also send five (5) courtesy copies to the attention of Janice M. Myles, Wireline Competition Bureau, Competition Policy Division, 445 12th Street, S.W., Suite 5-C327, Washington, D.C. 20554, or via e-mail janice.myles@fcc.gov. Paper filings and courtesy copies must be delivered in the following manner. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail).

83. The Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. The filing hours at this location last from 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. This facility is the only location where hand-delivered or messenger-delivered paper filings or courtesy copies for the Commission's Secretary and Commission staff will be accepted.

84. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

85. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW, Washington, D.C. 20554.

86. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

87. One copy of each filing must be sent to Qualex International, Portals II, 445 12th Street, S.W., Room CY-B402, Washington, D.C. 20554, telephone 202-863-2893, facsimile 202-863-2898, or via e-mail qualexint@aol.com.

88. Each comment and reply comment must include a short and concise summary of the substantive arguments raised in the pleading. Comments and reply comments must also comply with section 1.48 and all other applicable sections of the Commission's rules.²³² We direct all interested parties to include the name of the filing party and the date of the filing on each page of their comments and reply comments. All parties are encouraged to utilize a table of contents, regardless of the length of their submission.

²³² See 47 C.F.R. § 1.48

89. Filings and comments may be downloaded from the Commission's ECFS web site, and filings and comments are available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW, Room CY-A257, Washington, D.C. 20554. They may also be purchased from the Commission's duplicating contractor, Qualex International, which can be reached at Portals II, 445 12th Street, SW, Room CY-B402, Washington, D.C. 20554, by telephone at 202-863-2893, by facsimile at 202-863-2898, or via e-mail at qualexint@aol.com.

C. Accessible Formats

90. To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0531 (voice), 202-418-7365 (tty).

D. Initial Regulatory Flexibility Analysis

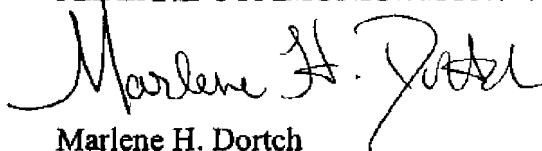
91. As required by the Regulatory Flexibility Act, 5 U.S.C. § 603, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities of the policies and rules addressed in this document. The IRFA is set forth in Appendix A. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments filed in response to this Notice of Proposed Rule Making as set forth in paragraph 80, and have a separate and distinct heading designating them as responses to the IRFA.

VIII. ORDERING CLAUSES

92. Accordingly, IT IS ORDERED that pursuant to the authority contained in sections 1, 4(i), and 4(j) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), this *Notice of Proposed Rulemaking* IS ADOPTED.

93. IT IS FURTHER ORDERED that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this *Notice of Proposed Rulemaking*, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration, in accordance with the Regulatory Flexibility Act.²³³

FEDERAL COMMUNICATIONS COMMISSION



Marlene H. Dortch
Secretary

²³³ See 5 U.S.C. § 603(a).